

Exhibit F

ORIGINAL

[Page 1]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
PHILIP FEI, on behalf of
himself and classes of
those similarly situated,

Plaintiffs,

vs.

No. 07 Civ. 8785

WEST LB AG,

Defendant.
-----X

DEPOSITION OF VIVIAN J. YOST

New York, New York

Thursday, May 15, 2008

Reported by:

SHAUNA STOLTZ-LAURIE

CSR NO. 810490

[Page 2]

1

2

3

4

5

May 15, 2008

6

11:15 a.m.

7

8

Deposition of VIVIAN J. YOST, held

9

at the offices of Outten & Golden LLP,

10

3 Park Avenue, New York, New York,

11

pursuant to notice, before Shauna

12

Stoltz-Laurie, a Notary Public of the

13

State of New York.

14

15

16

17

18

19

20

21

22

23

24

25

[Page 3]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S:

OUTTEN & GOLDEN LLP.

Attorneys for Plaintiffs

3 Park Avenue

New York, New York 10016

BY: LINDA A. NEILAN, ESQ.

TARA QUINLAN, ESQ.

HUGHES, HUBBARD & REED LLP.

Attorneys for Defendant

One Battery Park Plaza

New York, New York 10004-1482

BY: JASON HABINSKY, ESQ.

1 Yost

2 of executives?

3 A. That group of people called
4 executives?

5 Q. Um-hm.

6 A. Yes.

7 Q. All right, I do want to talk with
8 you about that. With respect to the job
9 descriptions, I first want to find out what
10 you did with respect to these job
11 descriptions.

12 A. Okay.

13 Q. So I think you said the first thing
14 you did was get a list of all the executives
15 and their title and their salary. Is that
16 right?

17 A. Right.

18 Q. Okay. And what's the next thing
19 that you did on the job description project?

20 A. I asked who the managers of these
21 individuals were.

22 Q. Okay.

23 A. And asked either the Human
24 Resources representative responsible for that
25 group or the manager if they had job

1 Yost

2 descriptions for any of these people.

3 Q. Okay. And then what did you do
4 next?

5 A. Sometimes they had job
6 descriptions, and I compiled those. And if
7 they didn't, I gave them the job description
8 template and asked them to write a job
9 description. And I would meet with the
10 manager, if they were writing a job
11 description themselves, to explain to them
12 what I was looking for in the job
13 description, and how to write one.

14 Q. And then would the manager write a
15 job description for the individual in
16 question?

17 A. I believe the individual wrote
18 their own job description.

19 Q. Okay.

20 A. The manager would guide the
21 individual based on the conversation that I
22 had had with the manager.

23 Q. And then what happened next?

24 A. The job description would come to
25 me, and I marked off that I had a job

1 Yost

2 description for that individual.

3 Q. Okay. And then what did you do
4 when you got all of these job descriptions?

5 A. I reviewed the job descriptions.

6 Q. Okay. And were there many steps
7 involved in that process of reviewing them?

8 A. It depends on what I was reviewing
9 them for.

10 Q. Okay. So what did you review job
11 descriptions for?

12 A. I reviewed to make sure that the
13 job descriptions were complete. Where there
14 were -- where there was information on the
15 job description that didn't make sense or
16 seemed inadequate, I went back and asked for
17 the job description to have more detail or to
18 be more clear. And I also went back to the
19 managers with questions about the job
20 descriptions, to make sure that I understood
21 the job description, and make sure that it
22 was an accurate reflection of what the
23 individual was doing.

24 MS. NEILAN: I want to the mark
25 this as [Yost] number 1.

1 Yost

2 A. I did not approve job descriptions.

3 Q. Do you know if some --

4 A. And I --

5 Q. I'm sorry.

6 A. I'm sorry.

7 And I don't remember if I reviewed
8 job descriptions in that box.

9 Q. Okay. Apart from this document,
10 you did review job descriptions, correct?

11 A. Yes, but I don't know if I was the
12 official person, in that box.

13 Q. Okay, I understand.

14 And then "Description Last
15 Updated," what does that refer to?

16 A. The last time this position
17 description was reviewed and updated.

18 Q. And do you know when you created
19 this document?

20 A. No.

21 Q. Was it at the start of you
22 performing your work on this job description
23 project?

24 A. Yes.

25 Q. Okay. Now, you said that you would

1 Yost

2 meet with managers to explain what you were
3 work looking for in the job description.

4 What did you tell the managers when
5 you met with them?

6 A. I explained to them what a job
7 description was, why it was important, how a
8 job description is created, and what
9 information should be in a job description.

10 Q. And did you have individual
11 meetings with managers, or was it one meeting
12 with all the managers?

13 A. Individual meetings.

14 Q. Okay. And did you meet
15 individually with all the managers of all the
16 executives?

17 A. I don't recall what managers, if I
18 met with every manager, with every executive.
19 I don't remember.

20 Q. Okay. Did you meet with many
21 managers?

22 A. Yes.

23 Q. Okay. And what did you tell them
24 regarding why a job description is important?

25 A. I told them that it was important

1 Yost

2 because an individual needed to understand
3 what their responsibilities were and what's
4 expected of them.

5 Q. Okay.

6 A. I also told them that it was
7 important so that we could understand the
8 primary duties of this job description. And
9 I also told them it was important to
10 understand the percentage of time that
11 individuals would work on primary duties in
12 case this person ever asked for a reasonable
13 accommodation. We needed to understand what
14 the essential functions of the job are as it
15 relates to the Americans With Disabilities
16 Act.

17 Q. Okay. And why was it important to
18 understand the primary duties?

19 A. Because I knew that when this job
20 description process was completed, that I was
21 going to need to evaluate these jobs for
22 possible exemptions under the Fair Labor
23 Standards Act.

24 Q. And do you know if or do you have
25 any idea of how many managers had to go off

[Page 69]

1 Yost

2 A. Yes.

3 Q. As part of the exemption testing
4 did you ever watch any executives while they
5 were performing their job duties?

6 A. As part of the exemption testing?

7 No.

8 Q. Okay, can we take a break now?

9 A. Yes.

10 Q. Is that okay?

11 (Recess taken.)

12 Q. Ms. Yost, did you remember the last
13 name of Holly?

14 A. Yes.

15 Q. And what was that?

16 A. Lyons, L-y-o-n-s.

17 Q. Okay, thank you.

18 So I think you said before, when
19 you were conducting the exemption testing,
20 after you had a full set of the complete job
21 descriptions you would look at The Federal
22 Register regulations and make determinations
23 about the exempt status of those individuals.
24 Is that correct?

25 A. No.

[Page 70]

1 Yost

2 Q. Okay. Can you explain to me what
3 you did?

4 I know you said you looked at The
5 Federal Register, and they had job
6 descriptions. Can you tell me exactly what
7 you did with that information?

8 A. Okay. Are you asking me to explain
9 my process?

10 Q. Yes.

11 A. Okay, but my -- my standard
12 operating procedure for this exemption
13 testing was to get the job description,
14 review it, and inevitably I would have
15 questions --

16 Q. Right.

17 A. -- about the duties, because from
18 reading the job description, you cannot
19 determine the significance and weightiness of
20 decisions, et cetera, all of which are
21 important factors in determining exemption
22 status. So I would write down my questions
23 on the job description, and I would go back
24 to the manager and/or the employee and ask
25 questions specifically about their duties so

[Page 71]

1 Yost

2 that I could perform an exemption test.

3 Q. And would you write the answers
4 that you got right there on the job
5 description?

6 A. Yes.

7 Q. Okay. And then what did you do
8 with those documents when you were finished
9 with it?

10 A. I discarded them. I didn't -- they
11 weren't part of my final report. I took that
12 document with those answers, and plugged them
13 into -- I made my determination, and I would
14 have that notation. Then I would plug that
15 information into the computer test program.
16 It would come out whether they were exempt or
17 not, and I attached that to the job
18 description, but I didn't keep my notes,
19 unfortunately.

20 Q. Okay, so do you have any records
21 regarding your conversations with managers or
22 executives regarding the duties or time they
23 spent on certain activities?

24 A. No. The documents Jason showed me
25 yesterday, I had one or two notes on them, on

[Page 100]

1 Yost

2 to go on your testimony that you don't
3 remember, and if you do remember when we come
4 across a certain person's name regarding
5 whether you interviewed that person, will you
6 let me know?

7 A. Yes.

8 Q. Okay. That will save us a little
9 bit of time.

10 A. Okay.

11 Q. So looking at the documents for
12 Barbara Rycki, who was an administrative
13 assistant, can you tell by looking at these
14 documents whether she was classified as
15 exempt or nonexempt?

16 A. Are you asking me to look at this
17 document and tell you whether it's exempt or
18 not?

19 Q. Well, let me clarify. That's a
20 good point.

21 What was your recommendation
22 regarding Barbara Rycki's classification?

23 A. I would have to look at my test
24 results here, and my result here is that she
25 would be nonexempt.

[Page 101]

1 Yost

2 Q. Okay. And so if you look at the
3 job description for Barbara Rycki at D 0626,
4 can you tell me what you based your
5 recommendation on that she should be
6 classified as exempt?

7 A. Barbara Rycki?

8 Q. Yes.

9 A. No, I can't tell you, because I --
10 a lot of my determination of whether she
11 should be exempt or not would be based on
12 conversations. There was so much more that
13 went into it than just the job description,
14 to make a determination. It would be based
15 on conversations about her specific duties
16 and how she performed those specific duties.

17 Q. Okay. Just looking at the
18 description of her job duties as an
19 administrative assistant, would you say that
20 those -- her job duties are clerical in
21 nature?

22 MR. HABINSKY: As expressed on this
23 document?

24 MS. NEILAN: That's right. I'm
25 asking her to look at the document

[Page 102]

1 Yost

2 D 0626, which has the --

3 A. They appear to be clerical in
4 nature.

5 Q. And what terms in this job
6 description lead you to believe that her job
7 duties appear to be clerical in nature?

8 A. "Supporting" all the individuals.

9 Q. Okay.

10 A. Typically somebody in an
11 administrative role supports other
12 individuals.

13 Q. Okay. Anything else?

14 A. "Answering phones." "Supporting"
15 again. "Maintaining department files."
16 Those are types of things that a clerical
17 individual would do.

18 Q. Okay. And are those -- okay. And
19 is there anything in the job description for
20 Barbara Rycki as an administrative assistant
21 that you think is inconsistent with the
22 classification of a nonexempt individual?

23 A. Can you rephrase the question?

24 Q. Sure.

25 Is there anything here in her job